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Hamburg, April 9, 1949

The Office Deputy
Judge Advocate General
Headquarters of the
British Army of the Rhine
B A O R

Case No 5

Concerning: L e n z, Hans-Richard, former Lt.Commander (Ing)

Petition for Review
of the findings of a military court of October 20, 1945

respectively

P E T I T I O N f o r P A R D O N

Through the findings of a military tribunal (War Crimes Court Hamburg, Curiohaus) of October 20th 1945 the former Lt. Commander (Ing), Hans-Richard Lenz was declared guilty of having been concerned in the execution of an order violating the laws and usages of war against the survivors of the SS Peleus and was sentenced to life-imprisonment.

This sentence was confirmed on November 29, 1945. Since then Lenz has been serving the sentence pronounced against him. At present he is imprisoned at the penitentiary Werl/Westphalia.

Since, as has been the case in respect to all war-crimes trials, the usual review of the findings by a higher juridical authority did not take place, I now request, in the name and by the authority of my client, to consider this petition as justified after the serving of 3 1/2 years of the sentence and to be allowed to submit a petition to the effect that

the grounds on which my client was found guilty be re-examined, that the arguments presented here be duly considered, and that, if advisable, to suspend, by way of a pardon, the sentence pronounced against Lenz, or, at least, to reduce it, respectively to grant him a postponement of service of sentence.

The so-called U-Boat Trial in which Lenz together with other former members of the German navy was convicted of violation of the laws and usages of war, was the first war-crimes trial in the British Zone and was carried out even before the trial of the principal war criminals in Nuremberg.

If, after a four-days session, the war-crimes court in Hamburg in the case against the commander of the U-Boat who gave the order to sink the wreckage of the steamer through fire from his submarine, came to the decision that the order issued was not necessary militarily, but on the contrary had been an unlawful order, then thereby by no means it was proved or has it been proved that Lenz on his part did recognize this order as an ostensibly criminal one, or that he should have been able to recognize it as such.

Aside from the fact that in the case of instruments of war, such as the submarine, the limits of permissible warfare are in themselves already difficult to recognize because place and nature of battle offer only restricted opportunities for measures of succor thereby necessarily involve greater severities than war on land, the findings of the International Military Tribunal in Nuremberg in the Dönitz case (Official edition, Vol. I, 350 pp) established in unmistakable terms that the conduct of unrestricted submarine warfare by the German navy did not represent a ~~violation~~ violation of International Law. On the contrary, in view of the proofs submitted that the British Naval Command likewise did issue similar orders and "in view of Admiral Nimitz' answers to a questionnaire to the effect that from the first day of entering the war the United States had carried on unrestricted submarine warfare in the Pacific Ocean", the Nuremberg Military Court expressly declared that "the punishment

meted out against Dönitz", who as the direct superior of the commanding officer of my client had likewise been charged with the Peleus case, " was not based on his violations of international conventions concerning submarine warfare".

On this basis of the ruling of this highest juridical authority there are good reasons for expressing the assumption, that the findings as well as the sentence against my client would have turned out differently if the results and conclusions of the Nuremberg trial had already been on hand when the military court in Hamburg sat in this case.

If it has been established hereby that in an objective and general sense the conduct of unrestricted submarine warfare does not represent an overt violation of the laws and usages of war, then it required an especially careful and cautious examination whether the special measures ordered by the commander did represent violations of provisions of International Law, and whether the officers and men of the submarine, who carried out the order, did recognise it as such, or, at least, were in a position to recognise clearly that the order was unlawful. There can hardly be any doubt that my client could be found guilty only if it had been established by the evidence that at the time when he acted upon the orders of his commander Lenz saw clearly, or should have seen clearly, that the order which he was carrying out was an unlawful, a criminal, order.

The following aspects, which are of decisive importance in regards to the criminal responsibility of my client, apparently have not been sufficiently considered by the court:

a) As prospective engineer-officer in the navy Lenz was imbued with the traditional soldierly sense of honor, which imposed the duty upon the midshipmen despite the rigours of war always to act humanely and to treat a defenseless opponent in a chivalrous manner. His commander had likewise been subject to the same kind of indoctrination. For Lenz there did not exist the least indication which would have justified his presumption that his commander was capable of committing a base crime. On the contrary, Lenz had been long enough on duty with his commanding officer to come to regard and esteem him as a highly

decent man and officer whose character was above reproach. Nevertheless Lenz did not uncritically follow the orders of his superior officer in blind obedience but from a high sense of responsibility critically examined the decision of his commander and did possess sufficient energy to attempt to persuade the commander to reconsider the order already issued at which occasion Lenz was primarily guided by humane considerations. The commander, however insisted upon the strict and unconditional execution of his orders, even if these did involve severe measures, arguing that tactical reasons as well as considerations of naval strategy required the sinking of the wreckage. Under these conditions Lenz, who as engineer-officer had no knowledge and experience in these purely military matters nor was at all in the position to do so, had to accept the respective decision as a military necessity. In the given situation he was therefore not in the least able to assume, that in respect to this order he was faced with an unlawful, a criminal order. Lenz did not and could not know this.

b) In the moment in which after having given his reasons the commander insisted upon the execution of his order and, as he himself expressly declared during the trial was resolved if necessary to enforce it at the point of a gun there was no possibility for Lenz, either as an officer or as a man, to prevent the carrying out of this order. As an officer Lenz was obliged in the interests of discipline and of the readiness for military action of the boat in a most severe emergency to obey the order of his commander even if this order did appear incomprehensible to him. In all armies of the world military effectiveness demands a farreaching limitation of duty and the right to question orders on the part of a subordinate. Even if in an objective sense the order of the commander was a false decision, perhaps even an unlawful order, and even if, on that account, the participation in the execution of this order may in an objective sense therefore not have been lawful, his unconditional duty to obey under these circumstances justifies in any case the view that he was not criminally responsible because this fact excludes a subjective guilt.

As a human being, likewise, Lenz could not prevent the carrying out of the order but merely was able to mitigate it at best. This Lenz did do. This was shown by his attitude when he took the place of the man at the machine-gun. As was also recognized by the court - a corresponding remark by the judge advocate indicated this quite clearly - this attitude was not the expression of a criminal or brutal mentality but was prompted by a high sense of duty, which demanded that such an order should only be carried out by an officer. The intervention of my client furthermore, had the effect that the commander finally permitted himself to be convinced that a complete sinking of the wreckage would require far too much time and ammunition so that he finally gave orders to cease firing and, upon the urging of my client, was induced to continue on his voyage. In this connection may I, perhaps, refer to the trial records which deal with the events of 13.3.1944 and to the testimony of my client from the witness box.

c) If in consideration of the foregoing arguments it must already appear very doubtful whether Lenz could at all be held criminally responsible for his actions, then in the course of the review of the measure of punishment the total situation in which the boat and its crew found themselves must find most extensive consideration:

The boat and its crew were already for weeks cruising in enemy waters in an especially dangerous field of operations. The climate of the Southern tropics and the living conditions on the submarine made the most severe physical and mental demands upon the crew. To this were added the excitements of the just completed attack. Under these extraordinary circumstances false acting in an objective sense cannot justly be held to be the equivalent of an action prompted by criminal intent as the power and the ability to judge cannot be gauged by the standards of normal conditions of life.

May I finally still point to the following: It is especially painful for my client to know what discrepancy there exists between the sentences meted out against the former Grossadmiral Dönitz (acquittal in this matter) and against the former commander Möhle (five years imprisonment) on the one hand and the sentence

of my client on the other. Both high officers as immediate superiors of the commander of my client had likewise been held responsible in the Peleus case. This conspicuous discrepancy between the sentences can find its explanation only in the fact, as initially stressed, that at the time of this first war crimes trial there did not exist as yet any experience and standards of comparison.

In reference to the character of my client may I in conclusion present the following arguments and their respective proofs:

Lenz comes from a highly respected, honorable, and formerly well situated family. From his early youth Lenz was induced by his father to engage in the chivalrous sports of hunting and horseback riding, while his mother already at an early time tried to introduce him into the world of esthetical appreciation. Lenz spent most of his leisure hours in attending theatres and concerts and in the practice of the viola. Travels in his own country, to the seashore and into the mountains, later trips abroad to Czechoslovakia, to Holland, and to Denmark widened his horizon and taught him to respect and esteem the accomplishments and manners also of other nations. As an exchange student he twice spent longer periods with an English family in Cambridge with which even today he maintains friendly relations. In respect to all this it may be said in summation that in his parental home and in school, which he left in 1935 after attaining his maturity degree in Berlin, Lenz did possess a well balanced education which had opened his mind to all noble and beautiful things. Viewed even from this angle it must therefore be regarded as utterly improbable, if not impossible, that knowingly or in gross negligence Lenz did commit a crime.

In order to prove the decency of his mental attitude, his unimpeachable character, and his high standards of morality with which Lenz approached every task assigned to him I am submitting in the

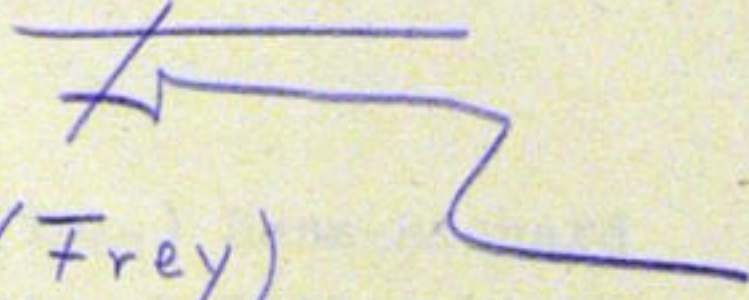
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letters and testimonials of persons who as friends of his family did know my client already since early youth, who

followed his personal growth and who therefore are in a position to give an estimate of his personality.

If in a conflict of choice between a higher order and his better moral convictions, which lasted only a few minutes, and which was made more difficult through the enormous physical and psychical stress of a long submarine journey in tropical waters, Lenz should have acted wrongly, then such action never had its source in a criminal mentality. If guilt may actually be attributed to Lenz, then during the period of his imprisonment as POW (since May 2, 1944) and especially during the past 3 1/2 years of harsh imprisonment in the Hamburg-Fuhlsbüttel penitentiary, which were made even more rigorous through the harsh general conditions of life in post-war Germany, Lenz should have sufficiently atoned for this guilt so that by now he ought to deserve a pardon which again would give him a ray of hope for his future life.

Counsel for the defense


(Frey)